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February 27, 2006

Via Electronic & First Class Mail
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Via Electronic Mail Only
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Re: Comments on the Final Forest Practices Habitat Conservation Plan, Implementation Agreement, and Final Environmental Impact Statement (71 Fed. Reg. 4609 (January 27, 2006)).

Dear Ms. Butts & Ms. Hamilton:

These comments are supplemental to those submitted today by Mr. Paul Kampmeier of this office.

The Services have acknowledged that an adaptive management program ("AMP") is used to address uncertainties in the ability of the prescriptions used by the recipient of the incidental take permit ("ITP") to minimize and mitigate take. The elements of a scientifically credible AMP are well recognized in the scientific literature, are included in the Services' HCP Handbook, and have been repeatedly stated in comments on the FPHCP. A review of the Services' "Response to Comments," Volume II of the FEIS ("FEIS Vol II"), indicates a failure to address their substance in a number of respects.

WFLC provided extensive comments on the failure of the AMP to clearly define the "closing the loop" decision making process, and the need to do so consistently with the requirements of the ESA. In response, the Services describe the decision process at FFR Policy and the Forest Practices Board. FEIS Vol II, p. 3-41. Rather than assure the public that only scientifically credible decisions will be accepted by the Services, statements are made that "the decision-making process includes the desire for consensus;" "It is the responsibility of the TFW/FFR Policy Group and the varying interests it represents to evaluate scientific information forwarded from the science-based CMER Committee in light of existing program goals, resource objectives, and performance targets;" and "position advocacy at the TFW/FFR Policy Group and Forest Practices Board levels is not only expected, but necessary given the complex and sometimes competing values embedded within these goals." There is more similar discussion at FEIS Vol II, pp. 3-54 – 3-55 ("decision-making by the Forest Practices Board primarily is governed by RCW 76.09.010 which states, among other things, 'that coincident with maintenance of a viable forest products industry, it is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty'").

All of the foregoing indicate a decision making process in the AMP that is not driven by science, and that has little or no oversight by the Services. In response to the latter concern, the Services claim that "Section 10.4 [sic; should be 10.2] of the Implementation Agreement provides that, should the State fail to implement an adaptive management change that the Services believe the data warrants, the Services may suspend or revoke the ITPs, after notice and an attempt to resolve the dispute." FEIS Vol II, p. 3-30.

The IA itself (Section 10.2) says; "If the Services determine that the State has not conducted such adaptive management monitoring, evaluation, and research as the Services determine is necessary, within a timeframe that the Services determine is reasonable, or has not modified forest management rules in a manner that the Services determine is appropriate in response to new information or changed circumstances, the Services will notify the State of the actions that are necessary to avoid suspension or revocation of the permit." (emphasis added) However, nowhere in the HCP or EIS is there any indication of what timeframe is "reasonable" or what changes will be considered "appropriate." Such an adaptive management program, breathing discretion at every pore, is unenforceable by the Services or the public, and is therefore not really "adaptive management."

In response to explicitly stated concern that there is no definition of necessary changes in the AMP, the Services state: "Several commenters desired explicit "decision criteria" within the adaptive management program. ... The Services acknowledge that some research projects are of a nature that the range of policy responses to the range of scientific outcomes can be predicted and reflected in 'triggers' or 'decision criteria.' However, the Services believe that there are many

circumstances where the optimum policy response to a scientific investigation may require further synthesis, deliberation, and consideration. This is particularly true where, as with the FPHCP, the decision-making process includes the desire for consensus..." FEIS Vol II p. 3-41. The Services have failed to identify the timeframe for action in response to the numerous known uncertainties identified in the adaptive management program, have failed to define criteria or triggers for necessary action, and in fact appear to have abdicated any responsibility for decision making other than attending Forests and Fish Policy meetings. See FEIS Vol II, p. 3-36, § 3.4.9.

The Services' inexplicable failure to require a real adaptive management program is reflected in the extraordinary claim that the FPHCP follows the precautionary approach. FEIS Vol II, p. 3-38. This statement is a complete misunderstanding of the precautionary principle, which, like adaptive management, is a response to uncertainty. The essential difference is that under the precautionary principle, management proceeds in a manner known in the present to be low risk rather than relying on an AMP to resolve uncertainties over time. The Services repeatedly acknowledge that the FPHCP is grounded on prescriptions that have considerable uncertainty. It is this very uncertainty that makes an adaptive management program a key element of any ITP based on the FPHCP. As the Services' HCP Handbook recognizes, there would be no need for adaptive management if the precautionary principle were applied, because there would be little or no risk based on uncertain outcomes or impacts. The Services refer to (but do little to evaluate) two low risk options which, unlike the FPHCP, are close to if not in compliance with the precautionary principle: Pollock, M.M. and P.M. Kennard, A low-risk strategy for preserving riparian buffers needed to protect and restore salmonid habitat in forested watersheds of Washington, 10,000 Years Institute, Bainbridge Island, Washington1998; FEMAT, Forest Ecosystem Management: An ecological, economic, and social assessment. Section V: Aquatic Ecosystem Assessment. Forest Ecosystem Management Assessment Team, Washington, D.C., 1993.

Regarding the likely impacts on aquatic resources if the FPHCP is implemented, numerous commenters expressed concerns, with many pages of analysis and numerous references to the scientific literature. Many comments, including those submitted by WFLC, indicated that the selected prescriptions ("Forests and Fish Rules") cannot meet riparian resource objectives or comply with the ESA. In response, the Services spend ten pages claiming that in each specific area (water quality, LWD, etc.) the analysis in the FEIS is correct. FEIS Vol II pp. 3-61 to 3-71. At one point the Services state that the riparian prescriptions of other forestry HCPs (such as Green Diamond's HCP on the Olympic Peninsula) "are not comparable." FEIS Vol II, p. 3-67. This incredible claim is made without any basis in fact.

In fact, the Services have spent years developing the "best available science" regarding the relationship of forest practices to riparian function. For example, in 1998, the Services proposed a program for management of state and private forest practices in Oregon that contained an extensive review of riparian prescriptions needed to comply with the ESA. A Draft Proposal Concerning Oregon Forest Practices, Submitted by the National Marine Fisheries Service to the Oregon Board of Forestry Memorandum of Agreement Advisory Committee and the Office of the Governor, NMFS - NWR Portland Office, February 17, 1998; accompanied by USFWS Service review of same date (letter from Michael Spear, Regional Director, to William Stelle, Jr., Regional Administrator), and by EPA review of January 9, 1998 (memo from Elbert Moore, EPA Office of Ecosystems and Communities to Rick Applegate, NMFS). (Copies are being submitted along with this letter.)

The 1998 Oregon proposals by the Services and EPA constitute a thorough review of the science and adaptive management needed to meet ESA (and CWA) standards. For example:

> [A]daptive management triggers must be specified as part of the initial set of management measures (or the process for establishing triggers must include a schedule for their development).

NMFS, p. 60.

> Implementation of these measures will not result in complete elimination of the adverse impacts currently degrading aquatic and riparian resources. Available literature and data suggest far more stringent measures would be necessary to accomplish this. However, the proposed measures are likely to maintain proper function where it currently exists and set degraded areas on a path towards restoration of proper function. Implementation of these measures on non-federal lands would go a long way towards allowing for coverage of riparian and aquatic associated species in habitat conservation plans for individual landowners.

USFWS, p. 7.

> In addition to testable hypotheses, actions must be related to a strong monitoring program and explicitly defined feedback mechanisms.

EPA, p. 7

The three agencies' 1998 documents covered all of the issues raised by the comments submitted last year, and we submit that the science has not changed a lot since that time. Instead of responding to the merits of the commenters' concerns, the Services have avoided them.

For example, WFLC submitted numerous documents of a technical nature that were generated earlier in the Forests and Fish process. Many of these documents became part of the record for NOAA Fisheries' ("NMFS") proposed 4(d) rule, 50 C.F.R. § 223.203. The Services state that these comments do not need to be addressed further now because they were answered in the 4(d) rulemaking process, citing 65 Fed. Reg. 42422-42481 (July 10, 2000). FEIS Vol II, p. 3-9. Aside from the fact that the standards for 4(d) and an HCP are different, this is a curious claim: the substantive discussion of the technical concerns with the riparian prescriptions are contained on less than three pages of the cited Federal Register publication (pp. 42464 to 42466), and is very general. More to the point, NMFS said then that "While an ESA section 10 HCP may be developed by a non-Federal entity using many of the elements of the FFR, that process has not yet progressed to the point that NMFS has become involved."

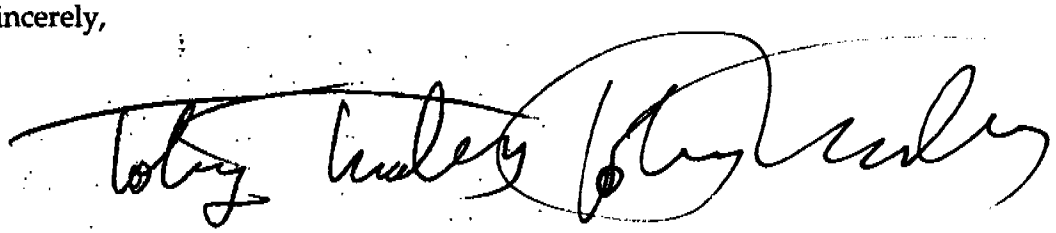
The 4(d) rule itself explicitly states that the assurances for Forests and Fish will not arise except for actions "in compliance with forest practice regulations adopted and implemented by the Washington Forest Practices Board that NMFS has found are at least as protective of habitat functions as are the regulatory elements of the Forests and Fish Report dated April 29, 1999." 50 C.F.R. § 223.203(b)(13(i) (emphasis added). Further, "Prior to determining that regulations adopted by the Forest Practice Board are at least as protective as the elements of the Forests and Fish Report, NMFS will publish notification in the Federal Register announcing the availability of the Report and regulations for public review and comment." 50 C.F.R. § 223.203(b)(13(v). As the Services well know, the Forests and Fish rules were not completed by the Forest Practices Board until July 2001, and they were never submitted to NMFS until 2005 as part of the FPHCP proposal.

The merits of the 4(d) rule were challenged in *Washington Environmental Council v. NMFS*, W.D.Wa. No. C00-1547R, with a final Order dated February 27, 2002. In that order, the court never reached the technical issues regarding the riparian prescriptions, but did note that NMFS' ability to adopt a generic 4(d) rule "in no way is intended to sanction the substance of the rule, let alone the science of the Forests and Fish Report." (emphasis in original) That review by NMFS was left for another day, and that day is now for two reasons: 1) the merits of the commenters' concerns regarding the science supporting the Forests and Fish rules have never been adequately addressed by the Services, and remain valid; and 2) Alternative 2 in the EIS expressly constitutes consideration of the Forests and Fish proposal as a 4(d) rule as contemplated under the above cited C.F.R. section.

Thank you for the opportunity to submit these comments. As part of the EIS process, we trust that they "will help the Services in their determination process." FEIS Vol II, p. 3-32.

Please let us know if you have any questions.

Sincerely,



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Re: Comments on the State of Washington's applications for ESA "take" authorization, including comments on the Final Forest Practices Habitat Conservation Plan, Implementation Agreement, and Final Environmental Impact Statement.

Dear Ms. Butts & Ms. Hamilton:

Thank you for the opportunity to comment on the State of Washington's final Forest Practices Habitat Conservation Plan ("HCP"), Implementation Agreement ("IA"), and the Services' accompanying Final Environmental Impact Statement ("FEIS"). All comments submitted by Chris Mendoza and/or the Washington Forest Law Center are submitted on behalf of Friends of the Columbia Gorge, Friends of the Wild Swan, Seattle Audubon Society, Conservation Northwest (formerly Northwest Ecosystem Alliance), Spirit of the Sage Council, Alliance for the Wild Rockies, The Lands Council, Washington Trout, Pacific Rivers Council, the Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources (the "Conservation Groups"). The contact information for the Conservation Groups was submitted with our May 12, 2005

comment letter and is incorporated herein by this reference. For the reasons described herein and in their other comment letters, the Conservation Groups respectfully request that the Services deny the state's applications for take authorization or insist on modifications to the state's forest practices rules, HCP, and IA.

The Conservation Groups generally appreciate the Services' considered response to the comments submitted last May, especially the Services' willingness to address in its FEIS (Vol. 2) the comments clearly directed to the IA, HCP, future ESA §7 biological opinion, and ESA §10 incidental take permit issuance criteria. As the Conservation Groups made clear in both the May 12, 2005 submission and a July 26, 2005 letter to you, the Conservation Groups' comments were and are directed to all elements of the Services' administrative process and should be included in the record for any NEPA, ESA §7, ESA §10, and/or ESA §4(d) agency action regarding the state's application for take authorization. To the extent the Services did not respond to certain comments, the Conservation Groups will look forward to the Services responses in their decision documents. In any event, thank you for responding in the FEIS to comments not necessarily directed to the DEIS.

Unfortunately, although the Conservation Groups appreciate the Services' work in responding to comments, the Services have not adequately responded to or solved many of the issues raised by the Conservation Groups. The Conservation Groups therefore re-assert and incorporate by reference all of the comments they submitted on or before May 12, 2005; the HCP, IA, and FEIS are essentially unchanged and suffer from the same problems the Conservation Groups previously identified.

For example, in response to varied and well-substantiated concerns regarding whether the HCP "minimizes and mitigates" impacts to the maximum extent practicable, the Services state that "...the essential piece of information...is whether the ecological needs of the covered species are met by the HCP." FEIS, Vol. 2, at 3-5. The Services' position essentially ignores the statutory "to the maximum extent practicable" language. In this case the applicant could do more to minimize and mitigate impacts but has chosen not to for political reasons—reasons having little to do with the species' ecological needs or best available science. The Services' cannot make a finding that the applicant has "minimized and mitigated" to the maximum extent practicable where the applicant could, but has chosen not to, do more to eliminate impacts to covered species.

Another concern is that the HCP does not adequately explain the applicability and scope of the "no surprises" assurances. FEIS, Vol. 2, at 3-39. Nor does the FEIS adequately consider the environmental impacts associated with failing to implement adaptive management and cure known deficiencies in the forest practices rules. Generally, the "no surprises" regulations require permittees to implement additional mitigation and conservation measures for changed circumstances provided for in the HCP; these regulations do not allow the Services to impose additional measures that address unforeseen circumstances or changed circumstances not provided for in the HCP. Unfortunately, the HCP does not clearly state what changed circumstances are addressed by the HCP, nor is it clear whether adaptive management is required to study *and fix*

problems listed in Schedule L-1 of the Forests & Fish Report or as necessary to protect aquatic species. Moreover, although the Service states that adaptive management is part of the HCP, thereby implying the process must work and result in rule changes over time, the Services also state that adaptive management "...should not be viewed as a tool to 'correct' known, significant inadequacies in the initial conservation strategy." FEIS, Vol. 2, at 3-57. The Services' refusal to unequivocally state the role and requirements of adaptive management as it relates to "no surprises" undermines public confidence in the response to comments, as well as the Services' repeated statements that adaptive management is critical to the HCP. See FEIS, Ch.2. The Services must state unequivocally that adaptive management must work and result in rule changes; that rule changes required by adaptive management are not subject to "no surprises" limitations regarding future, additional commitments of conservation resources; and that that the failure of adaptive management to address problems identified by Schedule L-1 constitutes a failure of the HCP.

To the extent the HCP and FEIS do discuss "no surprises", these documents identify an unreasonably narrow set of changed circumstances addressed by the HCP. The HCP generally states that only natural events constitute changed circumstances addressed by the HCP. The problem with this is that there are obviously certain reasonably foreseeable man-made problems that could change circumstances and warrant modification of the HCP and the commitment of additional conservation resources. For example, the rate of forest land conversion could drastically increase if the Puget Sound area population dramatically increases. Rates of timber harvest could also dramatically increase. The state's limitations on "changed circumstances addressed by the HCP" are too narrow and unreasonably only apply to naturally-caused events.

Another problem concerns language in the implementation agreement that may allow for extension of the incidental take permits without a rigorous and transparent public process. If the Services' position is that the state is not entitled to an automatic extension of the incidental take permits, the Services should insist on language in the implementation agreement clarifying that any decision to extend the permits' duration will go through a public process that includes public notice and an opportunity for citizen comment. FEIS, Vol. 2, at 3-28.

The Conservation Groups are also concerned with the apparent proposal to issue permit coverage to both the state and the regulated community based only on the state's application for incidental take permits. The Services cannot rely on the state to ensure landowner compliance with the incidental take permits and HCP. See FEIS, Vol. 2, at 3-29. If the permits are intended to cover landowners and the regulated community, those entities must sign and be bound by the implementation agreement and HCP. Just as the Services acknowledge their responsibility to ensure state compliance with the HCP, IA, and issued ITPs, so the Services must ensure landowner compliance with those same documents and rules if the landowners are to have permit coverage. The Services' "belief" in landowner compliance does not warrant failing to bind the regulated community to the ITPs and HCP via the implementation agreement.

The Conservation Groups also have grave concerns about the terms of the implementation agreement that allow the state to change its forest practices rules without losing the benefits of the incidental take permits. IA ¶11.4. Despite the Services' contention to the contrary, there is no language in the implementation agreement that binds the state to maintaining a forest practices regulatory regime "at least as protective as" the current rules. FEIS, Vol. 2, at 3-33. Rather, the only apparent limitation on changes to the forest practices rules is that they not "materially impair" the conservation program in the HCP. Unfortunately, there are no guidelines as to what constitutes "material impairment", nor, once the permits are issued, is there any way for concerned citizens to ensure that changes to the forest practices rules are not impairing the conservation program such that the permits should be suspended or revoked. Rather, paragraph 11.4 of the implementation agreement is an open invitation to the state to incrementally reduce the value of the HCP's conservation program, stopping only when the Services' muster the political will to revoke the incidental take permit—something the Services have never done in the history of the ITP program. The Services must bind the state, for the duration of the permits, to maintaining forest practices rules at least as protective as the current rules and changes to the rules must be considered changes to the HCP subject to approval by the Services.

The Conservation Groups are also very concerned about the Services' apparent refusal to acknowledge that the state must *ensure* adequate funding for the HCP. Past funding of adaptive management and DNR simply do not ensure adequate funding for a plan proposed for fifty years. Nor has the state taken any steps to set aside money now for future costs of the program; create a dedicated funding mechanism for the HCP; or agree to a series of more limited permit terms (say, five years), each of which is contingent on adequate funding. The ESA requires the applicant to ensure funding for the program; the Services may not grant the ITPs based on past funding or unenforceable promises regarding future funding, especially where the state could have done more to ensure funding but chose not to. There is simply no basis for the Services to conclude that the state will fund the HCP in ten years, much less thirty or forty years from now.

The Conservation Groups believe the state has not met the ESA §10 criteria and that the Services should therefore deny the state's application for incidental take permits. Please contact me if you have any questions about this letter or would like to discuss these issues further. In the meantime, the Conservation Groups will look forward to the Services' final decisions on the state's applications.

Sincerely,

WASHINGTON FOREST LAW CENTER

Paul A. Kampmeier
Attorney at Law

To: U.S. Fish and Wildlife Service and NOAA Fisheries
From: Washington Forest Law Center Staff
Date: February 27, 2006

Re: Forest Practices Incidental Take Permit: The FEIS' alternatives analysis is fundamentally flawed because (1) it erroneously relies on the assumption that Alternative 2 will prevent conversion of forest to other uses more than the environmentally-protective Alternative 4; (2) erroneously assumes that, without federal assurances, the State of Washington will "roll-back" its forest practices rules to 1999; and (3) relies on the flawed assumption that salmonid protection measures will stall if the timber industry does not get federal assurances.

INTRODUCTION

The HCP and the FEIS repeatedly state that federal approval of the Forest Practices HCP is advisable, justified, and necessary to conserve endangered salmon on the basis that the prescriptions of the HCP would be more protective of threatened or endangered fish than "non-forestry uses." In fact, the HCP explicitly and repeatedly makes the representation that "federal assurances" are the preferred alternative because not to provide such assurances will almost certainly lead to conversion of forest lands to non-forest uses as opposed to Alternatives 1 and 3. HCP, at vii ("Without regulatory certainty provided by take authorizations, there may be an increase in conversions of forestland to other non-forest uses that are less compatible with salmon recovery."); HCP, at 4 ("Another objective is to provide a regulatory climate and structure more likely to keep landowners from converting forestlands to other uses that would be less desirable for salmon recovery."); FEIS, at S-5 (lines 6-7); FEIS, at 2-6 (lines 10-13). The FEIS also asserts that the more environmentally-protective alternative, Alternative 4, is not preferable because (like Alternatives (a) and (b)) it too will lead to higher conversion rates. FEIS, at 4-5 (lines 27-29), 4-27--32. Finally, the EIS and HCP repeatedly assert that Alternative 2 is justified because neither the timber industry nor the Washington Legislature will remain committed to Forests and Fish-level rules in the absence of federal assurances. FEIS, at Table S-1.

The FEIS' analysis of the environmental impacts of the respective Alternatives is **flawed** and **inadequate, both legally and factually,** for at least these reasons:

(1) Conversion of forest land in Washington is occurring regardless of the forest practices regulatory environment. The Services erroneously assume that conversion would take place at a higher rate under Alternative 4, the more environmentally-protective alternative.

(2) The FEIS and HCP contain no assurance that, as a result of conversion, the area of "forest base" will not continue to drop dramatically.

(3) It is improper, as a matter of law, for the Services to grant federal assurances based on the timber industry and Legislature's apparent "threats" to abandon the Forests and Fish forest practices rules and its adaptive management system in the absence of federal assurances.

(4) There is no credible evidence that the Washington Legislature can, and will, roll-back the forest practices rules to their pre-Forests and Fish state.

ANALYSIS

(1) NEPA background.

The adequacy of an EIS is governed by the "rule of reason." Under NEPA, there are two distinct phases of alternatives analysis. First, the agency must choose from the universe of options a list of alternatives as "finalists" that it will study in detail. Second, the agency engages in a more rigorous environmental analysis of these selected finalists before making its ultimate decisions. NEPA regulations require an agency to "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." 40 C.F.R. § 1502.14(a). The "rule of reason" guides both the choice of alternatives as well as the extent to which an agency must discuss each alternative. City of Carmel-by-the-Sea v. United States Dep't of Transp., 123 F.3d 1142, 1154-55 (9th Cir. 1997).

If finalist alternatives are evaluated in reasonable depth, an agency is free to make any non-arbitrary choice among them, even to choose an alternative more environmentally harmful than other options. "If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by [NEPA] from deciding that other values outweigh the environmental costs." Carmel, 123 F.3d at 1159 (quotations omitted). However, if the agency unreasonably failed to include a viable alternative among its list of finalists, its alternatives analysis would be inadequate even if the selected site was clearly superior. While this juxtaposition may appear irrational at first, it reflects NEPA's role as a procedural statute. NEPA's primary purpose is to ensure that agencies incorporate environmental values as part of their decisionmaking. When finalist alternatives are subjected to rigorous environmental analysis, an agency becomes educated about the environmental effects of a project, and is then presumed to be able to make a reasoned and informed decision based ultimately upon the agency's expertise in its own field. In this case, for example, the USMC is not expected to prioritize environmental values above its military and operational needs, but it is required to become educated about environmental effects so that it may determine their proper weight. It is the agency, and not the courts, that have expertise in understanding agency objectives, and so courts will defer to such decisions so long as they were not arbitrary or

capricious. On the other hand, when an agency has unreasonably decided not to study a potentially viable alternative, then a court must assume that the agency was unable to adequately incorporate environmental values into its decisionmaking process. The purpose of NEPA cannot be achieved in such a void.

The discussion of alternatives is the "heart" of the FEIS. The FEIS discussion of alternatives must present a reasonable range of alternatives and is governed by the "rule of reason." An FEIS discussion of alternatives cannot be restricted by artificial or imagined constraints. The alternatives discussion must be fairly evaluated. An FEIS is not a "promotional document" or a post-hoc rationalization of a decision already made. An FEIS, in short, cannot be marred by serious lapses of disclosure and reasoning, such as conclusions that are sweepingly vague, unsupported in fact, reliant on fatuous statistics, stubbornly dogmatic, misleading, dependent on stale data, or biased.

A recent Ninth Circuit decision in Muckleshoot Indian Tribe v. U.S. Forest Service, invalidating an EIS for an exchange of Forest Service land for private land, is instructive. 177 F.3d at 813-15. The Service had preliminarily noted the option of placing deed restrictions on the public land to be traded to the logging company in order to protect environmental values. The Service declined to evaluate fully this option, noting that it would decrease the logging company's incentive to trade. The court found this reasoning unpersuasive. "[T]here is nothing in the record to demonstrate that the Forest Service even considered increasing Weyerhaeuser's incentive to trade either by offering additional acreage, subject to deed restrictions, or by decreasing the amount of Weyerhaeuser land transferred in the exchange." The court also faulted the Service for not considering land-for-cash exchanges as an alternative to land-for-land exchanges. Id. at 814. The court's decision in the Muckleshoot case is consistent with a long line of Ninth Circuit law on this issue. See, e.g., California v. Block, 690 F.2d at 766 (EIS with 11 alternatives invalid because it failed to consider designating more than 33% of the roadless areas evaluated to wilderness); Methow Valley Citizens Council v. Regional Forester, 833 F.2d 810, 815-16 (9th Cir. 1987), rev'd on other grounds, Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989) (EIS for ski area "inadequate as a matter of law" because agency failed to evaluate other locations for ski resort besides site owned by applicant);[1] City of Tenakee Springs v. Clough, 915 F.2d 1308, 1312 (9th Cir. 1990) (ten volume logging EIS invalid because agency did not evaluate alternative of amending timber sale contracts); Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1229 (9th Cir. 1988).

An agency cannot reject an alternative because it is "not within the jurisdiction of the lead agency" or outside the bounds of congressional authorization. 40 C.F.R. § 1502.14(c).

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[1] The Ninth Circuit's holding on this issue was not disturbed by the Supreme Court. Methow Valley Citizens Council v. Regional Forester, 879 F.2d 705 (9th Cir. 1989).

> An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies.

40 Questions at 2b; accord Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827, 836 (D.C. Cir. 1972) ("The mere fact that an alternative requires legislative implementation does not automatically establish that it beyond the domain of what it required for discussion, particularly since NEPA was intended to provide a basis for consideration and choice by the decisionmakers in the legislative as well as executive branch."); Muckleshoot, 177 F.3d at 814; City of Angoon v. Hodel, 803 F.2d 1016, 1021 (9th Cir. 1986). Moreover, an agency may not decline to evaluate an alternative simply on the grounds that it is not a "complete solution" to the agency's goals. NRDC v. Morton, 458 F.2d at 836 (agency should not "disregard alternatives merely because they do not offer a complete solution to the problem.").

To satisfy the requirement that it take a "hard look" at the consequences of its actions, an agency must engage in a "reasoned evaluation of the relevant factors" to ensure that its ultimate decision is truly informed. Greenpeace Action v. Franklin, 14 F.3d 1324, 1332 (9th Cir. 1992). An agency's failure to include and analyze information that is important, significant, or essential renders an EIS inadequate. 40 C.F.R. § 1500.1 ("The information must be of high quality.") An agency's failure to use the most up-to-date information and tools available, or the inclusion of erroneous information, undermines the public's confidence in the EIS and renders it legally defective. Tribal Village of Akutan v. Hodel, 869 F.2d 1185, 1192 n.1 (9th Cir. 1989). Without accurate, up-to-date information, there is no way for the public or the agency to adequately assess the pros and cons of a proposed action. See California v. Block, 690 F.2d at 761.

These fundamental NEPA principles apply to the economic as well as environmental analyses included in an EIS. See Animal Defense Council v. Hodel, 840 F.2d 1432, 1439 (9th Cir. 1988); Hughes River Watershed Council v. Glickman, 81 F.3d 437, 446 (4th Cir. 1996) ("For an EIS to serve these functions, it is essential that the EIS not be based on misleading economic assumptions."); 40 C.F.R. § 1502.23 (cost-benefit analysis). Agencies are required to ensure the professional integrity of all discussions and analyses in an EIS, including economic analyses. Id. §§ 1502.24, 1508.8 (The "effects" that an EIS must evaluate include economic impacts). Thus, an EIS that relies on misleading economic information or fails to include all relevant costs in its economic analysis violates NEPA, because it cannot fulfill NEPA's purpose of providing decisionmakers and the public a valid foundation on which to judge proposed projects. See, e.g., ONRC v. Marsh, 832 F.2d 1489, 1499 (9th Cir. 1987); Animal Defense Council, 840 F.2d at 1439.

Accordingly, the courts must invalidate a NEPA document if its economic analyses are misleading or incomplete. In Hughes River Watershed Council, for example, the Fourth Circuit found that the Corps of Engineers violated NEPA because its EIS for a proposed dam construction project overstated recreation benefits, a defect which impacted 32% of the project's total economic benefits. 81 F.3d at 447. By overstating the economic benefits of the project, the EIS was unable to serve its function of allowing decision-makers to balance the environmental impacts and economic benefits of the project. Id. at 446-48. Similarly, in Van Abbema v. Fornell, in a challenge to a Corps of Engineers EIS for a coal transloading facility, the Seventh Circuit concluded that the economic analysis relied upon inaccurate data, unexplained assumptions, and outdated reports. 807 F.2d 633, 640-42 (7th Cir. 1986). ("If the Corps bases its conclusions on entirely false premises or information, even when its attention is specifically directed to possible defects in its information, we would have difficulty describing its conclusions as reasoned . . . ."); see also Johnston v. Davis, 698 F.2d 1088, 1094 (10th Cir. 1983) (unqualified use of artificially low discount rate in economic analysis, even though legally required, resulted in misleading EIS that violated NEPA); Sierra Club v. Sigler, 695 F.2d 957, 975-76 (5th Cir. 1983) ("The Corps cannot tip the scales of an EIS by promoting possible benefits while ignoring their costs . . . . There can be no 'hard look' at costs and benefits unless all costs are disclosed.")[2]

(2) The Services' preference of Alternative 2 to Alternative 4 on the grounds that Alternative 2 will better stem the rate of forest conversion is erroneous because forest conversion will take place regardless of the perceived onerousness of the Washington Forest Practices Rules; the FEIS completely exaggerates the impact of Alternative 4 on forest conversion.

The FEIS admits that, as the population of Washington grows, lands are being converted at an alarming rate. FEIS, at 3-19--24. And, as noted above, the Services conclude that "federal assurances" are justified under Alternative 2, as opposed to Alternative 4, because they will help stem this rapid rate of conversion by maintaining a stable forest practices regulatory environment. FEIS, at S-7-16.

The Services' analysis overlooks that forest conversion would occur regardless of (1) the risk of ESA liability in the absence of an HCP or 4(d) rule; and (2) more protective conservation measures reflected by Alternative 4. The FEIS' alternatives analysis is fundamentally flawed to the extent that it repeatedly assumes that "federal assurances" are justified merely because they would stem the tide of conversion. In fact, conversion

[2] In a case that preceded Sigler, the Fifth Circuit adopted a particularly narrow scope of review for economic analysis. South Louisiana Environmental Counc. v. Sand, 629 F.2d 1005, 1011 (5th Cir. 1980). The Fourth, Seventh, Tenth, and Second Circuits, while sometimes citing Sand, appear to have not adopted this narrow standard of review. The Ninth Circuit, which has not had occasion to pass directly on this issue, has cited approvingly to Johnston v. Davis from the Tenth Circuit, perhaps the most expansive standard for review of economic analyses. ONRC v. Marsh, 832 F.2d at 1499 (economic analysis cannot be "misleading"); Animal Defense Counc. v. Hodel, 840 F.2d at 1439.

will (in the absence of creative measures) take place anyway and the "federal assurances" offered by the Forest Practices HCP would simply be applied to less and less forest land.

We do not mean to suggest that the Services should not endeavor to adopt measures—such as approving HCP's—that will work to prevent forest-land conversion. However, the Services cannot analyze and subsequently reject a more environmentally-protective Alternative (Alternative 4) merely because the Services deem that it will encourage conversion when that conversion is going to happen anyway under any alternative.

Attached to this comment letter are several "Discussion Papers" prepared by the University of Washington's College of Forest Resources' Northwest Environmental Forum. The Forum prepared the Papers for a November 2005 conference that was designed to help bring forest stakeholders together to stem the rapid rate of conversion of forests. The Discussion Papers are summarized in the following bullet points:

- There are approximately 60 large industrial timber companies in Washington (ownerships greater than 60,000 acres); there are approximately 30,000-50,000 "small forest landowners," those who own less than 5,000 acres. In Western Washington, the large industrial companies own 65% of Washington's 9.3 million acres of private forests. In Eastern Washington, large timber companies and small forest landowners own approximately 25-26% and 73-74% of the private forests. See *Private Forest Landownership in Washington State*, at 5-6.

- Recent studies reflect that from 1982-1997, 10.3 million acres of non-federal forest land has converted across the United States, approximately 680,000 acres per year. Id., at 9. It is estimated that 44.2 million acres of the nation's 262 million acres of private forest land will convert as a result of development pressures. Id., at 9.

- For small forest landowners, the greatest threat for conversion is the fact that ownerships are going through a period of 4th and 5th inter-generational transfers; inheritors are driven primarily by financial motives. Id., at 9. The second greatest factor affecting small forest landowners are the technical difficulties and expense of complying with the rules.

- For large industrial landowners, there is a major shift taking place: from companies that are "strategic owners" (the forest products industry) to financial investors. Id., at 9. Development of forest land is a primary goal of the financial investors. Id., at 9. As the Report says, "Washington is susceptible to forest loss through fragmentation and development as a competitive investment environment seeks return wherever it can be found." Id., at 9.

- The ownership of Washington's private forests have gone through three phases. The first phase took place 1983-1995 when large investment-driven "timber investment management organizations" (TIMOs) started investing in relatively inexpensive, modest investments. Id., at 11. The Northwest Forest Plan reduced

the quantity of timber coming from public lands and the TIMOs made a fortune, over 25% returns. Id., at 12.

- The second phase took place 1996-2000. During this phase, mills closed in the West and capacity moved to the American South; the Japanese economy failed and Western timber prices plummeted. Wood was coming from everywhere, including the South, Canada, Australia, New Zealand, and South America. Id., at 12. Pressure mounted on the timber industry to increase its return on equity which, in essence, led to a drive to fragment and sell timberland for other uses. Id., at 12. This was fueled by the drive to maximize revenues. Id., at 12. Companies over-harvested their lands to meet debt service and earnings goals. Id., at 12.

- The third phase is currently taking place. Investors are awash in capital. They acquire land or companies as a whole, then actively spin off their assets in transactions engineered to generate the highest possible return. Id., at 14. These companies are highly leveraged and are managed by sophisticated investors with little patience and little concern for sustainable forest management. Id., at 14. The mantra of the new investor is this: highest and best use. Real estate development has become a large component of return. Id., at 14.

- Proximity to highways and development opportunities and the presence of streams and rivers, which require environmental set-asides, are the two single most important drivers of conversion. *Economically Sustainable Working Forests: Financial Analysis Principles and Applications,* at 3.

- The regulatory certainty offered by the long-term Forest Practices HCP will encourage retention and investment in forests. *The Status of Washington State's Forest Practice Habitat Conservation Plan: Its Origin, Objectives, and Possible Value for Different Landowners*, at 5. However, the complexity of the Forest Practices HCP—even more than its alleged environmental onerousness—is a primary reason why the HCP will not encourage small forest landowners to retain their forests. Id., at 6-7.

- Huge amounts of capital are moving into Washington State and purchasing timberlands. These investors are driven by return on capital and are very conversion-prone. The Wall Street Journal, Nov. 4, 2005, "U.S. Timberlands Gets Pricey As Big Money Seeks Shelter"; High Country News, Jan. 23, 2006, "Timberlands Up For Grabs."

- Major Washington-based timber companies, like Weyerhaeuser, are actively in the process of liquidating their forest holdings to development and more intensive forestry uses. They are doing this regardless of long-term "conservation" measures such as the Forest and Fish HCP. See Seattle Times, February 26, 2006, "Weyerhaeuser Buzz: trees or paper?" The Services have completely overlooked that more environmentally-protective measures, such as Alternative 4, would not

merely exacerbate conversion but is necessary to prevent environmental harm that will result from ominous conversion trends.

- Major amounts of forests have been lost to conversion and industrial fragmentation. See Wilderness Society, Cascade Crest Forests, Sept. 2003 (attached). The HCP does not, at all, deal with this trend but, instead, assumes a "one-size-fits-all" set for forest practice rules would promote conservation.

- The loss of forestland in Washington is the result of economic trends that are completely separate and apart from the perceived onerousness of the environmental regulations. In fact, there are NUMEROUS measures that Washington could take to stem the rate of conversion in conjunction with the more environmentally-protective Alternative 4. These measures include: restructuring the tax system to incentivize landowners to remain in forestry, develop a way to compensate forest landowners to stay in forest through "ecosystem services" payments, develop a robust transferable development rights program, providing technical assistance to small forest landowners, and revise the rules to make them easier for small forest landowners to comply with. The FEIS is fundamentally flawed because it completely failed to consider that such measures could be included in Alternative 4, the more environmentally-protective alternative. Rather, the Services merely conclude that Alternative 2 is the only way to stem conversion of forestlands. A slide show prepared by the Pacific Forest Trust (attached) shows that there are numerous OTHER ways to protect habitat other than through the regulatory approach.

- Small Forest Landowners can "live" with Forests and Fish and, in fact, government bureaucracy is more of a threat than environmental rules. See "Family Forests in Washington—A Vision for the Future." (Attached).

The media has recently shed light on the economic trend facing Washington forests. Attached to this Comment letter are articles from the Wall Street Journal and High County News. These two articles reflect that massive amounts of capital are moving into Washington State and purchasing its timberlands for development. All of this is happening before the Services approve the HCP.

We have placed additional materials in the Record to REBUT the Services' justification for choosing Alternative 2 (that environmental rules are the predominant reason for the conversion of our forests).

- A Summer 2004 article in Science and Technology entitled, "Forests Face New Threat: Global Market Changes." This article concludes that there are numerous systemic threats facing America's private forests today. While creating a "stable regulatory environment" helps prevent forest conversion in some ways, this fact is eclipsed by the globalization of the timber market.

- A September 24, 2005 New York Times article entitled, "Living in the Trees and Raising a Few to Boot." This article documents how Washington's largest landowner, Weyerhaeuser, is both getting around Forests and Fish's 20 acre minimum parcel size requirement and converting its lands to development at the same time.

- A November 2004 edition of Science Findings, a publication of the Pacific NW Research Station of the U.S. Forest Service. This article confirms the enormous pressure of conversion, conversion that is taking place irrespective of the strength of the environmental laws.

(3) The FEIS and HCP fail to consider that, as a result of conversion, the area of "forest base" will not continue to drop dramatically.

The materials attached to this comment letter reflect that, as Washington's population grows, there will continue to be extraordinary conversion pressure on Washington's forests. As a result, the area of forest covered by the Forest Practices HCP will continue to decline over the years. This trend justifies the opposite of what the Services conclude: the fact that the forest land base will be shrinking in size over the next 50 years does not justify "relaxing" the rules under the Forests and Fish HCP but, on the contrary, justifies strengthening the rules.

Yet, no where in the FEIS do the Services analyze the impact of the environmental impact of how a Forests and Fish HCP will apply relative to an increasingly-shrinking area of forest base. If, as the FEIS and the attached materials suggest, forest conversion will continue to occur, then a strong argument can be made that the prescriptions of the HCP need to be more, as opposed to less, onerous to ensure protection of Washington's remaining forests. Nor does anything in the sections pertaining to the adaptive management program provide any answers to this question. The adaptive management provisions merely address whether the Forests and Fish rules are "effective" and whether Washington is enforcing them.

(4) The FEIS improperly favors Alternative 2 to Alternative 4 on the basis that the Washington State Legislature will "roll-back" its 1999-adopted Forests and Fish Report rules and abandon its Adaptive Management Program if the Services do not provide 50-year assurances.

The FEIS repeatedly assumes that Alternative 2 is preferable to Alternatives 1 (a) and (b) and 4 because, if the Services do not provide ITP assurances as proposed under Alternative 2, the Legislature will roll-back its Forests and Fish Report rules, de-fund the adaptive management process, and such non-approval will de-moralize and discourage forest stakeholder participation in the adaptive management program. FEIS, at S-1-7. In fact, the entire FEIS is replete with this analysis. FEIS, at 2-3- 2-6, 2-31, 2-37, 2-40--41, 2-46--50.

The Services' assumption that it should grant an ITP based on such factors is completely contrary to fact and law.

As previously stated, the purpose of NEPA is to require the consideration of reasonable alternatives and to assure that these alternatives are not unreasonably constricted. Green County Planning Board v. Federal Power Commission, 559 F.2d 1227, 1232 (2d Cir.1976), cert. denied, 434 U.S. 1086, 98 S.Ct. 1280, 55 L.Ed.2d 791 (1978); Fayetteville Area Chamber of Commerce v. Volpe, 515 F.2d 1021, 1027 (4th Cir.), cert. denied sub nom.; Interstate 95 Committee v. Coleman, 423 U.S. 912, 96 S.Ct. 216, 46 L.Ed.2d 140 (1975). A detailed statement of alternatives will not "be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man." Vermont Yankee, 435 U.S. at 551, 98 S.Ct. at 1215. See also Coleman, 555 F.2d at 400; Life of the Land v. Brinegar, 485 F.2d 460 (9th Cir.1973), cert. denied, 416 U.S. 961, 94 S.Ct. 1979, 40 L.Ed.2d 312 (1974); Natural Resources Defense Council v. Morton, 458 F.2d 827, 837-38 (D.C. Cir.1972). The alternatives discussion is held to be subject to a requirement of reasonableness. Adler, 675 F.2d at 1097 (and cases cited therein). See Township of Springfield, 702 F.2d at 442 n. 29.

First, as a factual matter, the notion that the Washington Legislature would repeal the Forests and Fish Report rules is factually erroneous. Rep. Hans Dunshee has provided a letter (attached) stating that it will be virtually impossible for the Legislature to roll-back the forest practice rules to their pre-1999 status. In fact, RCW 77.85.190(2) does not require a "roll-back;" it merely states that the Governor and Legislature shall take "appropriate" action if the Services do not approve the HCP.

Second, the Services' reasoning ignores that the HCP, ITP, and FEIS essentially concede that Washington's pre-1999 aquatic forest practices rules fail to provide adequate protection for listed salmonids. Given this important concession, it was arbitrary and capricious for the Services to ignore that Section 9 of the ESA, the "no-take" provision that can be enforced by Citizen Suits, would permit a roll-back. Moreover, the FEIS and HCP fail to even consider the fact that Section 9 Citizens Suits will deter a legislative roll-back.

Third, the Services' reasoning that an ITP is justified to avoid a roll-back amounts to capitulation to corporate extortion. The Services are, in essence, concluding, "We had better grant this ITP or else the Washington timber industry will exercise its political muscle and get the Legislature to roll-back the rules to their pre-1999 status." Federal action is not justified merely because a politically-powerful lobby, such as the timber industry, makes hollow threats.

CONCLUSION

The HCP and FEIS repeatedly rely on the flawed notion that the granting of federal assurances (and the "regulatory certainty" that comes with it) is necessary to and will likely stem the tide of conversion of forest to other uses. While the HCP may provide a stronger incentive for small forest landowners to keep their lands in forests, the same cannot be said about the large industrial landowners who own about 60% of Washington's private forests.

Washington's large industrial landowners are increasingly being driven by the demand for short-term profits and not long-term sustainable returns. Conversion of forest lands to higher and better uses is a central strategy in achieving higher returns. Contrary to the central premise of the HCP and FEIS, the granting of federal assurances will not stem the tide of forest land conversion because it will take much more than these measures to accomplish this important result. Long-term federal assurances for large industrial landowners will simply add to their profits, as opposed to creating an enforceable or realistic incentive to maintain their lands in forest.

The Forest Practices HCP contains no assurances that Washington's existing 9.3 million acres of forest will remain in forest. If, in fact, the Services approve this HCP, it will likely apply to an increasingly smaller area of forests over its 50-year term.

A central factual premise of the FEIS and HCP is flawed: the HCP is not an incentive for industrial landowners to remain in forests, but is instead a huge out-of-scale reward to the large industrial timber companies for stepping forward and agreeing to increase the level of protection for their lands beyond their appalling historically-low levels—levels they have been defending for years.

The Services are in violation of NEPA in the way they assess the relative environmental and economic impacts of the respective alternatives.

To: U.S. Fish and Wildlife Service and NOAA Fisheries
From: Washington Forest Law Center Staff
Date: February 27, 2006

Re: Cumulative Effects

The Washington Forest Practices Board has never adopted, and has repeatedly failed to adopt, forest practices rules preventing multiple related forest practices from having a significant adverse cumulative impact on the aquatic environment. The State is being sued for its failure to do so.

The Services have arbitrarily and capriciously assumed that the Washington state forest practices rules can and will deal with cumulative effects. The Services failed to consider the State's failure to address cumulative effects in its NEPA analysis and its Section 10 analysis.

Attached are briefs explaining the State's inadequacy in addressing the cumulative effects of multiple related forest practices.

Attachments:

1. Petitioners' Opening Brief, ALPS v. Washington State Forest Practices Board
   Thurston County Superior Court No. 03-2-00717-7

2. Petitioners' Reply Brief, ALPS v. Washington State Forest Practices Board
   Thurston County Superior Court No. 03-2-00717-7

3. Appellants' Opening Brief, ALPS v. Washington State Forest Practices Board
   Washington State Court of Appeals, Division Two, No. 33676-6-II

4. Appellants' Reply Brief, ALPS v. Washington State Forest Practices Board
   Washington State Court of Appeals, Division Two, No. 33676-6-II

Documents Submitted with Washington Forest Law Center
Comments on FPHCP and FEIS
February 27, 2006

WFLC Staff Memorandum re: Forest Practices Incidental Take Permit: The FEIS' alternatives analysis is fundamentally flawed because (1) it erroneously relies on the assumption that Alternative 2 will prevent conversion of forest to other uses more than the environmentally-protective Alternative 4; (2) erroneously assumes that, without federal assurances, the State of Washington will "roll-back" its forest practices rules to 1999; and (3) relies on the flawed assumption that salmonid protection measures will stall if the timber industry does not get federal assurances.

Attached Documents:

1. Saving Washington's Working Forest Land Base Forum, Nov. 21-22, 2005, Discussion Papers:

   A. Private Forest Landownership in Washington State
      Ara Erickson and James Rinehart; Oct. 24, 2005

   B. Economically Sustainable Working Forests: Financial Analysis Principles and Applications
      Kevin W. Zobrist; October 24, 2005

   C. Forest Products Export Trends Update for the Pacific Northwest Region
      John Perez-Garcia and Kent Barr; October 24, 2005

   D. Implications of Working Forest Impacts on Jobs and Local Economies
      Bruce Lippke and Larry Mason; October 24, 2005

   E. Innovative Responses to the Forest Practices Permitting Process
      Alicia Robbins; October 24, 2005

   F. How the Public Perceives Forestry (and Why It Matters)
      Sarah Murray and Peter Nelson; October 24, 2005

   G. The Status of Washington State's Forest Practice Habitat Conservation Plan: Its Origin, Objectives and Possible Value for Different Landowners
      John M. Calhoun; November 1, 2005

   H. Current Land-Use Laws and Zoning: Impacts on Private Forestlands
      Peter Nelson; October 24, 2005

   I. Examining Washington's Working Forest Stakeholders
      Peter Nelson; November 2, 2005

J. Centuries of Change in Pacific Northwest Forests: Ecological Effects of Forest Simplification and Fragmentation
Mark Swanson; October 24, 2005

K. Conservation Organizations: What They Do and Why They Do It
Lindsay Malone; October 24, 2005

L. Ecosystem Services Markets
Alicia Robbins; October 27, 2005

M. Recent Efforts by States to Incentivize Working Forests
Sarah Murray; November 3, 2005

2. "U.S. Timberlands Gets Pricey As Big Money Seeks Shelter"
The Wall Street Journal, Nov. 4, 2005.

3. "Timberlands Up For Grabs"
High Country News, Jan. 23, 2006.

4. "Forests Face New Threat: Global Market Changes"
Jerry F. Franklin and K. Norman. Johnson, Science and Technology, Volume XX No. 4, Summer 2004.

5. "Trees, Houses and Habitat: Private Forests at the Wildland-Urban Interface"
Jonathan Thompson, Science Findings, Issue 68, November 2004.

6. "Briefing: Working Forest Conservation Easements"
The Pacific Forest Trust

7. "Living in the Trees, and Raising a Few to Boot"
Kristina Shevory, The New York Times, Personal and Business, B7, September 24, 2005.

8. "Family Forests in Washington- A Vision for the Future"
Ken Miller Washington Farm Forestry Association. 2005

9. "Saving Washington's Working Forest Land Base"
Northwest Environmental Forum, Conference Proceedings, University of Washington, College of Forest Resources. November 21-22, 2005.

10. Cascade Crest Forests: Forest Loss, Habitat Fragmentation, and Wildness.
Landscape Analyses of the Central Cascades in Washington State, The Wilderness Society, Sept. 2003.

	11. "Weyerhaeuser Buzz: trees or paper?" Melissa Allison, Seattle Times, February 26, 2006. 12. Representative Hans Dunshee's letter re: FPHCP, Feb. 27, 2006
	Seattle Post-Intelligencer Special Report: "A License to Kill" Robert McClure and Lisa Stifler, Seattle Post-Intelligencer. May 3-5, 2005.
	Stephen Ralph, Senior Aquatic Ecologist, Stillwater Sciences, Memorandum re: Review of Washington Forest Practices Habitat Conservation Plan—Adaptive Management **Attached Document:** 1. Putting Monitoring First: Designing Accountable Ecosystem Restoration and Management Plans. Stephen C. Ralph and Geoffrey C. Poole.
	WFLC Staff Memorandum re: Cumulative Effects **Attached Documents:** 1. Petitioners' Opening Brief, ALPS v. Washington State Forest Practices Board Thurston County Superior Court No. 03-2-00717-7 2. Petitioners' Reply Brief, ALPS v. Washington State Forest Practices Board Thurston County Superior Court No. 03-2-00717-7 3. Appellants' Opening Brief, ALPS v. Washington State Forest Practices Board Washington State Court of Appeals, Division Two, No. 33676-6-II 4. Appellants' Reply Brief, ALPS v. Washington State Forest Practices Board Washington State Court of Appeals, Division Two, No. 33676-6-II
	A Draft Proposal Concerning Oregon Forest Practices Submitted by the NMFS to the Oregon Board of Forestry Memorandum of Agreement Advisory Committee and the Office of the Governor, Feb. 17, 1998.
	USFWS Feb. 17, 1998, letter to NMFS transmitting comments on "A Draft Proposal to Improve Oregon Forest Practices."
	EPA's Assessment and General Comments on NMFS' Draft Proposal to Improve Oregon Forest Practices, Jan. 9, 1998.